
**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

CARLY GRAFF, et al., on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

ABERDEEN ENTERPRIZES II, INC., *et al.*,

Defendants.

4:17-CV-606-TCK-JFJ
Hon. Terence C. Kern

**DEFENDANTS' JOINT MOTION FOR ISSUANCE OF ORDER CONFIRMING ECF
165 GOVERNS DEFENDANTS' NUMBER OF BRIEFS AND PAGE LIMITATIONS
FOR THOSE BRIEFS**

The County Sheriff Defendants, in their official and individual capacities, and Defendants Board of County Commissioners of Tulsa County, Don Newberry, Darlene Bailey, and Vic Regalado, move for an order from this Court affirming that ECF 165, the Court's previous ruling on the number of briefs and the page limits for all those briefs to Defendants' motions to dismiss, remains the Court's position. Plaintiffs presumably object to this motion.¹ Defendants show the following in support:

1. Plaintiffs filed their amended complaint on February 28, 2018. *See* ECF 76.
2. Before filing their motions to dismiss, many Defendants sought various

¹ The undersigned (Attorney Hendrickson) only requested Plaintiffs' position on the County Sheriff Defendants' request for leave to file two briefs of no more than 40 pages each, consistent with ECF 165, to which Plaintiffs objected, and has not sought Plaintiffs' more general position on the CSDs request simply for the Court to affirm the ruling in ECF 165 as to all Defendants. The undersigned presumes Plaintiffs' objection to the CSDs initial request will carry over to the more general request lodged in this motion.

enlargements of the briefing page limit set out in Local Rule 7.2(c). *See* ECF 152, ECF 155, ECF 157, ECF 159, and ECF 161. Plaintiffs opposed some of these requests. The Court granted some and denied some in an omnibus order issued on March 16, 2018. *See* ECF 165.

3. The parties filed their motions to dismiss on March 23, 2018, all of which were mooted by Plaintiffs' filing a second amended complaint with leave of court on September 21, 2018. *See* ECF 175-185; ECF 211-212.

4. Defendants thereafter filed renewed motions to dismiss from October 19-22, 2018. *See* ECF 226-239. These motions/briefs complied with the page limitations in the Court's ruling at ECF 165.

5. The Court released its opinion and order granting Defendants' motions to dismiss on March 12, 2021. *See* ECF 352. Plaintiffs appealed this opinion to the Tenth Circuit, which reversed the opinion and remanded the case to this Court for further proceedings on April 11, 2023. *See* ECF 366-367.

6. In the appellate briefing, Defendants offered to the Tenth Circuit alternative pathways to affirm this Court's ruling. The Tenth Circuit declined to rule on these grounds, describing the "various alternative bases to affirm" as "neither straight-forward nor easily resolved," and remanding so this Court could produce a 'reasoned...decision on the subject[s].'" *See* Op. and Order, ECF 366, at pg. 44 (citation omitted).

7. The Tenth Circuit also noted in its opinion that the parties should address on remand the impact of amendments to Okla. Stat. tit. 22, § 983. *Id.* at pg. 17, n. 14. This Court, in its minute order setting the briefing schedule on Defendants' renewed motions, likewise directed the parties to "contemplate the revisions to Okla. Stat. tit. 22, § 983[.]" *See* ECF 380.

8. Given the nature of the questions left unresolved following the initial briefing cycle

and the initial appellate briefing cycle, which include—among other topics—questions about judicial immunity, quasi-judicial immunity, qualified immunity, standing, mootness, the sufficiency of pleading for individual-liability claims under the Racketeer-Influenced and Corrupt Organizations Act as well as the Fourth and Fourteenth Amendments, and the sufficiency of pleading for municipal-liability claims under the aforementioned constitutional amendments, plus the addition of the required assessment of a newly enacted amendment to a key Oklahoma statute that will affect Plaintiffs’ forward-looking claims, the number of briefs permitted and the page limitations set forth for those briefs in ECF 165 remain appropriate for the upcoming round of Defendants’ motions to dismiss.

9. Moreover, this lawsuit remains of significant size, complication, and import. The granting or denying of the Defendants’ motions to dismiss will be a pivotal part of the scope of the case going forward. The Court should thus afford Defendants a full opportunity to adequately brief the issues discussed in paragraph 8, *supra*.

10. Given this, the Court should enter an order affirming that ECF 165 is the law of the case for Defendants’ number of briefs and page limitations for those briefs. Given the goings-on in this case since October 2018, Defendants wish not to presume the state of things and seek the Court’s position out of an abundance of caution.

For these reasons, the above-named Defendants request the Court enter an order affirming that ECF 165 is the law of the case. Given Plaintiffs’ opposition, a proposed order will not be submitted.

Date: July 5, 2023

Respectfully submitted,

s/ Jeffrey C. Hendrickson

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Tulsa County Cost Admin. Darlene Bailey;
and the Board of County Commissioners of
Tulsa County*

CERTIFICATE OF SERVICE

I certify that on **July 5, 2023** I electronically transmitted the attached document to the Clerk of this Court using the ECF System for filing. Based on the records currently on file, the Clerk will transmit a Notice of Electronic Filing all ECF registrants who have appeared in this case.

s/ Jeffrey C. Hendrickson

Jeffrey C. Hendrickson